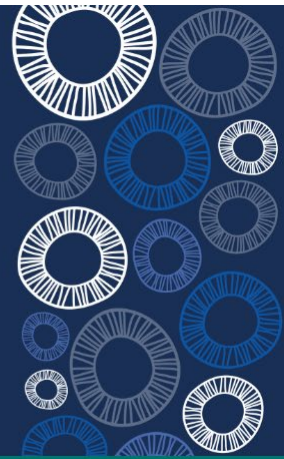




Administrative
Appeals Tribunal

AAT Bulletin



AAT Bulletin

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The *AAT Bulletin* is a fortnightly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes a sample of decisions recently published in the AAT's Migration & Refugee Division and Social Services & Child Support Division. It occasionally includes information on legislative changes that affect the AAT.

It is recommended that the Bulletin be read online. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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Enquiries regarding this publication may be directed to LPExtFeedback@aat.gov.au.

Contents

AAT Recent Decisions	3
Child Support	3
Citizenship	4
Freedom of Information	4
Health	4
Migration	5
National Disability Insurance Scheme	9
Practice and Procedure	10
Refugee	11
Social Security	11
Taxation	13
Appeals	14
Appeals lodged	14
Appeals finalised	14

AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Child Support

[Baiss and Forster](#) (Child support) [2023] AATA 4456 (14 December 2023); J Bakas, Member

CHILD SUPPORT – departure determination – special needs of the child – whether cost of maintaining child significantly affected – no ground of departure established – decision under review set aside and substituted

[Beanland and McGann](#) (Child Support) [2023] AATA 4458 (7 December 2023); J Prentice, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations – decision under review affirmed

[Cantrill and Lydon](#) (Child support) [2023] AATA 4285 (17 November 2023); J Nalpantidis, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – decision under review set aside and substituted

[FFCM and Child Support Registrar](#) (Child support second review) [2024] AATA 223 (20 February 2024); W Frost, Member

CHILD SUPPORT – percentage of care – revocation of existing care percentage determinations – care period – change in care notification – adherence to parenting plan – conflicting evidence – decision affirmed

[Ousey and Haines](#) (Child support) [2023] AATA 4464 (13 December 2023); S Hoffman, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – a ground for departure established – decision to depart - decision under review set aside and substituted

[Tritton and Ashley](#) (Child support) [2023] AATA 4466 (14 December 2023); S De Bono, Senior Member

CHILD SUPPORT – departure determination – income and financial resources of the liable parent – benefits derived from business – decision under review set aside and substituted

[YPRS and Child Support Registrar](#) (Child support second review) [2024] AATA 195 (13 February 2024); Dr S Fenwick, Senior Member

CHILD SUPPORT – percentage of care – child temporarily resident overseas – consideration of actual care – determination of new percentages of care – whether ‘special circumstances’ arise – decision set aside and substituted

Citizenship

[Ghanbar and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 196 (15 February 2024); J C Kelly, Senior Member

CITIZENSHIP – application for citizenship by conferral – citizenship application refused – whether the applicant is a person of good character – the applicant’s reliance on incorrect information – applicant’s reasons for not disclosing correct information – reviewable decision affirmed

[Hussain and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 235 (2 February 2024); Mrs J C Kelly, Senior Member

CITIZENSHIP – application for citizenship by conferral – citizenship application refused – whether the applicant is likely to reside, or continue to reside in Australia or maintain a close and continuing association with Australia if the application were to be approved – section 24(5) prohibition when applicant is not present in Australia – reviewable decision affirmed

Freedom of Information

[Ellickson and Secretary, Department of Defence](#) [2024] AATA 236 (22 February 2024); Britten-Jones, Deputy President

INTERLOCUTORY APPLICATION – request for summons to issue under s 40A of the Administrative Appeals Tribunal Act 1975 (Cth) – evidence of the proposed witnesses not relevant to the issues for determination under the Freedom of Information Act 1982 (Cth) – requests to issue summons refused

Health

[PKCW PTY LTD and Australian Community Pharmacy Authority](#) [2024] AATA 184 (5 February 2024); A Poljak, Senior Member

HEALTH – Pharmacists – retail pharmacy – Application for approval to supply pharmaceutical benefits at premises other than premises in respect of which approval already granted – Where lease was terminated – Item 312(b)(v) – National Health (Australian Community Pharmacy Authority Rules) Determination 2018 (Cth) – Whether exceptional circumstances exist – Decision under review set aside and substituted

Migration

[Ahmadi](#) (Migration) [2023] AATA 4144 (4 December 2023); M Cooke, Senior Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 117 (Orphan Relative) – identity – false or misleading information or bogus document – date of birth – no birth certificate – national ID issued with self-declared date – applicant’s and sibling’s dates of birth changed between sponsor’s own visa application and applicant and siblings’ application – sponsor’s estimation of years and application made in third country – school records support claimed age if applicant started at standard age – school years and calendar formats – born between two siblings whose ages are sufficiently supported – mother’s age at birth of each child – all other information consistent – decision under review remitted

[Bovenberg](#) (Migration) [2023] AATA 4167 (1 December 2023); S Burford, Senior Member

MIGRATION – Confirmatory (Residence) (Class AK) visa – Subclass 808 (Confirmatory) – holder of a specified substantive temporary visa – present in Australia at the COVID-19 border closures – request for Ministerial intervention – pending Partner visa application – unique or exceptional circumstances – unfairly subject to Public Interest Criteria 4014 – decision under review affirmed

[Chouttu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 237 (12 January 2024); T Tavoularis, Senior Member

MIGRATION – remitted to the Tribunal for the second time- non-revocation of mandatory cancellation of a visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – where Applicant fails the character test - where Applicant has a lengthy criminal history – where Applicant committed acts of family violence against multiple victims -where the Applicant has multiple protective factors in community – Tribunal finding the risk of reoffending moderated by the protective factors – protection and expectations of the Australian community along with family violence committed by the Applicant outweighed by ties to Australia, interests of minor children, impediments upon return and impact on victims – Tribunal finding another reason to revoke the mandatory cancellation decision- decision under review set aside and substituted

[DDGN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2024] AATA 174 (16 January 2024); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of bridging visa – whether ‘another reason’ for revocation of cancellation decision – Direction 99 – serious offences involving indecent assault and arson – applicant has serious mental health conditions – no support networks in the community – substantial and real risk of failing to adhere to medicinal regime – mentally unwell person being detained in a non-therapeutic environment an unsatisfactory situation – liberty a fundamental common law right – decision set aside and revocation of cancellation decision substituted

Gent and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2024] AATA 185 (12 February 2024); A Poljak, Senior Member

MIGRATION – Cancellation of Class TY Subclass 444 Special Category visa under subsection 501(2) – where applicant does not pass the character test – applicant has substantial criminal record – whether the discretion under section 501(2) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is affirmed

Ghimire (Migration) [2023] AATA 4178 (1 December 2023); M Sheargold, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – temporary residence transition stream – cook – subject of approved position nomination – related nomination application refused and no application for review made – department’s delay in processing application – employer died suddenly with no succession plan, business sold and applicant’s continuing work for new owners – occupation has been removed from list for stream – shortage of skilled workers in regional area – unique and unforeseeable circumstances – referred for ministerial consideration – members of family unit – decision under review affirmed

Gouveia and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2024] AATA 239 (22 February 2024); S Evans, Member

MIGRATION – Applicant citizen of Portugal – visa mandatorily cancelled pursuant to section 501(3A) of the Migration Act 1958 (Cth) – where the applicant has a substantial criminal record section 501(6)(a) – sentenced to a term of imprisonment of 12 months – review of decision to refuse to revoke mandatory cancellation under section 501CA(4) – where the applicant does not pass the character test – Direction no. 99 considered – extensive offending history – history of poly drug use – diagnoses of schizophrenia and drug induced psychosis – significant risk of reoffending – Applicant continued to use illicit substances while in prison contrary to oral evidence – decision under review affirmed

JRVP and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2024] AATA 218 (5 February 2024); R Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – long history of offending including violent offences and family violence – limited rehabilitation – decision under review affirmed

Li and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2023] AATA 4585 (6 December 2023); D Cosgrave, Member

MIGRATION – mandatory visa cancellation – failure to pass good character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – where criminal offending leading to failure of character test involved a minor- Tribunal finding risk of reoffending of unacceptable – where Applicant has limited ties in Australia – Tribunal finding factors in favour of revocation outweighed by those against revocation – Tribunal finding there is no other reason to revoke the mandatory cancellation decision – decision under review affirmed

Lim (Migration) [2023] AATA 4146 (7 December 2023); S Hoffman, Member

MIGRATION – Business Skills (Provisional) (Class EB) visa – Subclass 188 (Business Innovation and Investment (Provisional)) – investor stream – direct involvement in managing qualifying business or investments – no further documents provided, no submissions made and consent to decision without hearing – limited evidence of eligible business ownership – value and financing of properties claimed as eligible investments – direct involvement in management – authenticity of documents – created at relevant times or recently for purpose of supporting application – similarity of handwriting, signatures and pen used and discrepancies between documents – members of family unit – two applicants not in Australia when review application made – no jurisdiction for those applicants – decision under review affirmed

Miller and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2024] AATA 175 (22 January 2024); D O'Donovan, Senior Member

MIGRATION – mandatory cancellation of applicant's Class BF Transitional (permanent) visa – applicant is a citizen of United Kingdom – aggravated sexual intercourse with a minor – persistent sexual abuse of a child – destroy or damage property – break enter and steal – failure to pass the character test – whether there is another reason to revoke the visa cancellation – Direction No. 99 – protection of the Australian community – family violence – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties – extent of impediments if removed – standard of medical care United Kingdom – decision under review affirmed

Muller and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2024] AATA 224 (20 February 2024); R Cameron, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of Class BF Transitional (Permanent) visa – substantial criminal record – failure to pass the character test – whether there is another reason to revoke the visa cancellation – Direction No. 99 – recklessly causing serious injury – common law assault – drink driving – other offending – protection of the Australian community – expectations of the Australian community – strength, nature and duration of ties to Australia – best interests of minor children – extent of impediments if removed – decision under review affirmed

Patel (Migration) [2023] AATA 4148 (30 November 2023); A Mercer, Member

MIGRATION – Skilled Independent (Permanent) (Class SI) visa – Subclass 189 (Skilled – Independent) – points test – score exceeded pass mark but not score in invitation to apply – some points gained after application made – visa and review applications made by agent – visa application affected by fraud and invalid, not merely negligent – agent being investigated for misconduct and believed to have left Australia – members of family unit – second applicant husband's successful application for another subclass visa – decision under review set aside and substituted

PLCP and Minister for Immigration, Citizenship and Multicultural Affairs (Migration)
[2024] AATA 198 (1 February 2024); C J Furnell, Senior Member

MIGRATION – mandatory cancellation of Class XB Subclass 202 Global Special Humanitarian visa – Migration Act 1958 (Cth) s 501CA(4) – South Sudan – Applicant does not pass the character test – substantial criminal record – whether there is another reason why mandatory cancellation should be revoked – Direction 99 – primary and other considerations – decision under review affirmed

Razwantee and Minister for Immigration, Citizenship and Multicultural Affairs
(Migration) [2024] AATA 197 (15 February 2024); S Boyle, Deputy President

MIGRATION – s 501CA(4) of Migration Act – decision not to revoke mandatory cancellation of visa – conviction for use of electronic communication with intent to expose a person under the age of 16 years to indecent matter – where the Applicant does not pass the character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Ministerial Direction No. 99 – cancelled visa has expired – protection of the Australian community – links to the Australian community – the best interests of minor children in Australia – expectations of the Australian community – legal consequences of the decision – impediments if removed – considerations in favour of revocation of cancellation outweigh those against revocation of cancellation – decision under review set aside and substituted

Taylor and Minister for Immigration, Citizenship and Multicultural Affairs (Migration)
[2024] AATA 205 (16 February 2024); A Younes, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 99 – nature and seriousness of offending conduct – protection of the Australian community – conduct engaged in family violence – strength nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – impediments to removal – significant brain injury – decision set aside and substituted

TGRN and Minister for Immigration, Citizenship, and Multicultural Affairs (Migration)
[2024] AATA 155 (8 February 2024); R West, Member

MIGRATION – mandatory cancellation of applicant’s visa – conviction for sexual penetration of sibling or half sibling - applicant does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – other considerations – legal consequences of the decision – extent of impediments if removed – decision affirmed

[Tollitt and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2024] AATA 156 (9 February 2024); A. Nikolic, Senior Member

MIGRATION – Citizen of the United Kingdom – cancellation of Class BB Subclass 155 Resident Return (Permanent) Visa – 2018 conviction for Indecent Assault – failure to pass good character test – whether another reason why mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – reviewable decision set aside

[Wang and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 202 (17 January 2024); J C Kelly, Senior Member

CITIZENSHIP – application for citizenship by conferral – citizenship application refused – whether the applicant is a person of good character – domestic violence – seriousness of offence – failure to disclose offence – whether sufficient time has elapsed since Applicant’s offending – reviewable decision set aside

[Zhang and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 234 (22 February 2024); The Hon. John Pascoe AC CVO, Deputy President

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where applicant does not pass the character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Direction No. 99 – protection of the Australian community – the strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed – reviewable decision set aside

National Disability Insurance Scheme

[Grasser and National Disability Insurance Agency](#) [2024] AATA 188 (13 February 2024); P J Clauson AM, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – application for access – major depressive disorder – fibromyalgia – golfer’s elbow – plantar fasciitis – permanency – whether the effects of an impairment are permanent – whether there are known, available and appropriate treatments likely to remedy an impairment – available treatment – full engagement with treatment – whether further investigations are required to determine permanency of impairments – degree of permanency – decision under review affirmed

[Green and National Disability Insurance Agency](#) [2024] AATA 189 (8 February 2024); T Bubutievski, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – COPD – emphysema – bipolar affective disorder – whether substantially reduced functional capacity – reduced mobility due to breathlessness – self-care affected due to shortness of breath – psychosocial impairment of limited impact due to appropriate medical treatment – decision under review affirmed

[Holmes and National Disability Insurance Agency](#) [2024] AATA 186 (12 February 2024); George, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – whether Applicant is a person who meets the access criteria set out under section 24 NDIS Act – congenital heart disease – fatigue – whether condition results in substantially reduced functional capacity – decision under review affirmed

[Laurente and National Disability Insurance Agency](#) 20218320 [2024] AATA 217 (19 February 2024); K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Application for Review of Decision – Access to Scheme – Substantially Reduced Functional Capacity – Hearing Loss – Decision Under Review Affirmed

[Minervini and National Disability Insurance Agency](#) [2024] AATA 187 (25 January 2024); D Barker, Member

Whether the Tribunal has jurisdiction to undertake the requested review – Whether the decision is reviewable decision – whether the Applicant requested an internal review – Decision not reviewable by the Tribunal – Application dismissed under subsection 42A(4) of the AAT Act

[Pallier and National Disability Insurance Agency](#) [2024] AATA 157 (7 February 2024); M Mischin, Deputy President

NATIONAL DISABILITY INSURANCE AGENCY – access to scheme – peripheral neuropathy secondary to chemotherapy affecting sensation, motor skills and balance, and causing weakness and chronic pain – abdominal mesh inserted surgically with recurring complicated mesh infections – whether the Applicant meets the disability requirements in section 24 or the early intervention requirements in section 25 of the National Disability Insurance Scheme Act 2013 (the NDIS Act) – whether the Applicant’s impairments result in substantially reduced functional capacity to undertake one or more of the activities listed in section 24(1)(c) of the NDIS Act – whether there are other service systems that would be more appropriate to provide the assistance the Applicant seeks.

[Rieser and National Disability Insurance Agency](#) [2024] AATA 176 (9 February 2024); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – dystonia – whether there is substantially reduced functional capacity – whether early intervention requirements are met – decision affirmed

Practice and Procedure

[Kakakios and National Disability Insurance Agency](#) [2024] AATA 216 (14 February 2024); P Hunter, Member

PRACTICE AND PROCEDURE – stay application – whether staying the proceedings would assist – utility in granting order - ultra vires – inconsistent with Tribunal objectives – not in the interest of the party – application refused

[Nickolopoulos and Military Rehabilitation and Compensation Commission](#) [2024]
AATA 200 (25 January 2024); A George, Senior Member

PRACTICE AND PROCEDURE – application for confidentiality – procedural fairness – public interest – no substantive grounds for confidentiality – application refused

Refugee

[1823235](#) (Refugee) [2023] AATA 4193 (12 September 2023); R Da Costa, Member

REFUGEE – protection visa – Ghana – particular social group – homosexual – pressured to hide homosexuality – anti-LGBT bill before Ghanaian Parliament – fathered child in Australia – assaulted by group of men – decision under review remitted

[1933110](#) (Refugee) [2023] AATA 4195 (6 September 2023); C Carney-Orsborn, Member

MIGRATION – protection visa – China – Federal Circuit Court remittal – religion – underground Roman Catholic – limited attendance when young – mother and uncle arrested – delay in applying for protection and period as unlawful non-citizen – attendance and activities in Australia to enhance protection claims, and limited supporting evidence – no leadership role – two children, one now Australian citizen – claim on family planning law ground withdrawn – passport and multiple departures and returns without difficulty – country information – official toleration – recent agreement between the Vatican and Chinese authorities – decision under review affirmed

[2001364](#) (Refugee) [2023] AATA 4374 (22 September 2023); K Chapple, Member

REFUGEE – protection visa – Venezuela – political opinion – opposition to the Venezuelan government – targeted, insulted, harassed and threatened by collective members – kidnapped and harmed – extortion – absence of corroborative documentary evidence – country information – human rights violations – repression of political dissent – arbitrary detention – enforced disappearance – decision under review remitted

[2013365](#) (Refugee) [2023] AATA 4364 (2 October 2023); J Pennell, Senior Member

REFUGEE – protection visa – Burma (Myanmar) – ethnic minority – Chinese born in Burma – stateless – no legal status of permanent residence or citizenship – discrimination and harassment – fears forcible recruitment into ethnic armed group (KIA) and Burmese Army – political opinion – opposed to Military regime in Myanmar – active with PDR and HHICOM – decision under review remitted

Social Security

[Dormanli and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 4545 (23 November 2023); S Evans, Member

DISABILITY SUPPORT PENSION (DSP) – ISSUE: Date from which Applicant entitled to DSP arrears to be paid – date of effect of favourable determination – s 109 and 110 of the Social Security (Administration Act) 1999 – seeking review after notification of a decision – private company income – private company cancelled – decision under review set aside and remitted for recalculation from earlier date

[Howlett and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 203 (9 January 2024); K Millar, Senior Member

SOCIAL SECURITY – pensions, benefits and allowances – claim for Disability Support Pension rejected – whether applicant’s conditions were fully diagnosed, treated and stabilised during the qualification period – whether applicant’s conditions attracted an impairment rating of at least 20 points – decision under review affirmed

[Lawson and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 158 (9 February 2024); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – Applicant made numerous claims for crisis payments – whether Applicant satisfied qualification criteria for a crisis payment for other extreme circumstances or a national health emergency – meaning of “extreme circumstances” – whether the Applicant’s circumstances were “extreme circumstances” – Applicant did not satisfy qualification criteria – reviewable decisions in all applications affirmed

[Nedorezov and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 154 (9 February 2024); J C Kelly, Senior Member

SOCIAL SECURITY – age pension – whether the applicant has 10 years of qualifying Australian residence – the frequency and duration of the Applicant’s travel outside Australia – the nature of the accommodation used by the Applicant in Australia – the nature and extent of the family relationships the Applicant has in Australia – the nature and extent of the Applicant’s employment, business or financial ties with Australia – any other matter relevant to determining whether the Applicant intends to remain permanently in Australia – reviewable decision affirmed

[Robinson and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 240 (23 February 2024); K Millar, Senior Member

SOCIAL SECURITY – pensions, benefits and allowances – claim for Disability Support Pension rejected – whether applicant’s conditions were fully diagnosed, treated and stabilised during the qualification period – whether applicant’s conditions attracted an impairment rating of at least 20 points – whether applicant has a continuing inability to work – applicant did not participate in a program of support – decision under review affirmed

[Wade and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA (22 February 2024); B Pola, Senior Member

SOCIAL SERVICES – Eligibility for Disability Support Pension – Appeal of decision of Social Services and Child Support Division – where purported impairments included chronic testicular pain and mental health conditions – where evidence indicates varying views as to source of pain – where mental health conditions not diagnosed by psychiatrist or clinical psychologist – conditions not fully diagnosed – section 94(1)(b) of Social Security Act 1991 (Cth) not satisfied - decision affirmed

Taxation

[CPG Group Pty Ltd and Commissioner of Taxation](#) (Taxation) [2024] AATA 199 (5 January 2024); F D O'Loughlin KC, Deputy President

TAXATION – GST – general anti-avoidance provision – gold industry – whether it would be concluded an entity entered into scheme for sole or dominant purpose of obtaining a GST benefit – whether obtaining a GST benefit the principal effect of scheme – decision set aside

[The Counsellor and Commissioner of Taxation](#) (Taxation) [2024] AATA 220 (13 February 2024); G Lazanas, Senior Member

TAXATION – income tax default assessments due to non-lodgement of income tax returns – whether the taxpayer discharged onus of proof in showing nil taxable income in relevant income years – no agreement to limit issues in dispute except agreed prior year losses to be carried forward – whether payments to taxpayer or for taxpayer's personal expenses by taxpayer's company properly characterised as repayments of loans made by taxpayer to company – whether loans made by company to taxpayer – whether loans made by taxpayer's brother to taxpayer – provenance of amounts – intermingling of taxpayer's funds with those of the company - failure to adduce reliable evidence – credibility of taxpayer and brother – whether administrative penalties correctly imposed for failure to lodge tax returns – objection decision affirmed – objection to shortfall interest charges dismissed for want of jurisdiction as no shortfall interest charges imposed

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Adam and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 7
Curoglu and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 54
HLXZ and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 45
Merican and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 404
Miller and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 175
Su'A and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 48
XRZG and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 3952

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Falaniko v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 1781	[2024] FCA 111
Manikantan v Secretary, Department of Employment and Workplace Relations	[2022] AATA 4051	[2024] FCA 94
NHWY v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 2439	[2023] FCA 1680
Ripley v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 3250	[2024] FCA 93



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